

April 16, 2004

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Federal Trade Commission  
Mr. Donald S. Clark  
Office of the Secretary  
Room 159-H  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
Attention: FACTA Free File Disclosures Proposed Rule, Matter No. R411005



Re: FACTA Free File Disclosures Proposed Rule, Matter No. R411005

Dear Mr. Clark:

CSC Credit Services Inc. ("CSC") appreciates the opportunity to comment on the FACTA Free File Disclosures Proposed Rule (the "Proposal") for the Fair and Accurate Credit Transactions Act of 2003 ("FACT Act or the Act"). CSC Credit Services is a consumer reporting agency that, by agreement, compiles, owns, and maintains credit files that are housed in the Equifax credit reporting system.

The Proposal seeks comment on the FACT Act's requirement that the Federal Trade Commission ("FTC") adopt rules to require the establishment of (1) a centralized source through which consumers may request a free annual file disclosure from each nationwide consumer reporting agency; (2) a standardized form for such requests; and (3) a streamlined process for consumers to request free annual file disclosures from nationwide specialty consumer reporting agencies.

In this regard, the FTC requested that commentors key their comments to the particular question or section of the proposed rule to which they relate. Accordingly, we have set forth below the particular questions and related sections of the Proposal on which we have comments.

**Question 4.** Is the proposed rule's requirement that if nationwide consumer reporting agencies have the ability to sell a consumer report to a third party they must provide an annual file disclosure to that consumer through the centralized source appropriate?

a) Should the rule specifically address the relationship between nationwide consumer reporting agencies and associated consumer reporting agencies, i.e., those consumer reporting agencies that maintain consumer files within the systems of nationwide consumer reporting agencies? If so, how should the rule address this relationship?

b) Is the definition of associated consumer reporting agency contained in section 610.1(b)(2) clear and adequate?

To what other entities, besides those described under section II, above, might this definition apply?

c) What will be the effect of the rule on the contractual relationships that exist between nationwide consumer reporting agencies and their associated consumer reporting agencies? How could the rule address these effects?

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d) What is the number and nature of associated consumer reporting agencies currently doing business in the U.S.?

What is the scope of their operations?

How many consumer reports are sold annually through these entities?

Are any of these entities small businesses (i.e., those with less than \$6,000,000 in average annual receipts)?

If so, how many?

What will be the economic impact of the proposed rule on these small entities?

Could the proposed rule be modified, consistent with the requirements of the FACT Act, in a way that would lessen the economic impact of the rule on such entities?

If yes, please describe.

**Answer:**

As noted in the proposed rule, the FACT Act requires nationwide consumer reporting agencies to provide annual file disclosures to consumers without charge. By its terms, Section 211(a) of the FACT Act imposes this obligation only on nationwide consumer reporting agencies and not any other entity. The proposed regulation, therefore, properly recognizes that the need to obtain and provide the annual file disclosures is the responsibility of the nationwide consumer reporting agencies. As a result, the requirement in proposed Section 610.2(d) that -- "If a nationwide consumer reporting agency has the ability to provide a consumer report to a third party relating to a consumer, that agency shall provide an annual file disclosure to such consumer if the consumer makes a request through the centralized source." is appropriate.

We believe that the relationship between nationwide consumer reporting agencies and associated consumer reporting agencies is appropriately described in the preamble to the rule and is not required to be specifically addressed in the rule itself. As a result, a formal definition of the term "associated consumer reporting agencies" may not be necessary in the rule and, instead may be placed in the preamble.

Because it focuses on the "maintenance" of consumer credit files, the definition of associated consumer reporting agency could prove to be confusing. In at least one of the credit reporting systems, "ownership" of credit files, rather than maintenance of credit files, is a key characteristic of the affiliate relationship. Also, part or all of the maintenance function of an associated consumer reporting agency may be performed by a third party or by the nationwide credit reporting agency. Accordingly, we would suggest using the word "owns" in lieu of the word "maintains."

**Question 7.** Should the proposed rule provide relief for nationwide consumer reporting agencies during times of extraordinary request volume?

If yes, does section 610.2(e) of the proposed rule adequately address those potential situations?

If not, what additional provisions are needed and why?

**Answer:**

We believe it is appropriate for the proposed rule to provide relief for nationwide consumer reporting agencies during times of extraordinary volume. However, the proposed rule does not adequately address the issue. The rule allows relief only when request volumes exceed two times the rolling 90-day average. On what basis was this multiple determined?

Nationwide consumer reporting agencies will be required to build in a capacity of double the average volume of requests, even if the likelihood is that double volume will rarely, if

ever, occur. This requirement unreasonably increases compliance costs for the nationwide consumer reporting agencies.

A more reasonable multiple of average volume should be required. Rather than double the average volume, 125% of average volume should suffice. This would allow the nationwide consumer reporting agencies to defer acceptance of some disclosure requests and avoid potentially disastrous situations caused by the inevitable spikes in the volume of consumer disputes that will follow each disclosure spike.

One of the most compelling reasons for relief from times of extraordinary request volume is that associated consumer reporting agencies (not just nationwide consumer reporting agencies) must handle the fluctuations in the volume of consumer disputes. While the FACT Act allows a longer period of time to respond to consumer disputes (45 days versus 30 days for all other disputes), it does not lengthen other prescribed times for processing disputes. Consumer reporting agencies presumably must still provide notice of the dispute to the furnisher of information within 5 days of receiving the dispute as required by Section 611(a)(2)(A), and they must still provide written notice to the consumer of the results of the reinvestigation within 5 days of concluding the reinvestigation as required by Section 611(a)(6)(A). The net result of the extra time for resolving disputes may, in practice, assist only furnishers of information, who will need extra time to respond to the increased volume of dispute notices sent by the credit reporting agencies.

Associated consumer reporting agencies are likely to be more vulnerable to dispute spikes than nationwide consumer reporting agencies due to nature of their local market. Many disclosure volume spikes and the dispute volume spikes that follow may result from publication of security breach incidents that are local or statewide in nature. To nationwide consumer reporting agencies, even a tripling of dispute volume in one state or area may have little effect on its total dispute volume. However, to an associated consumer reporting agency, which may have a file ownership territory wholly within one state, a localized or regional tripling of dispute volume could overwhelm its dispute processing capability.

When dispute volume exceeds a consumer reporting agency's processing capacity, the agency has only one legal choice: to remove the disputed information as requested by the consumer without verifying it with the furnisher. This results in reduced accuracy of credit files. Alternatively, a consumer reporting agency may choose to risk violation of the time requirements of Section 611 in an attempt to preserve credit file accuracy. This choice to preserve accuracy puts the agency at risk of litigation or enforcement activity and places the consumer at a disadvantage.

The rule should allow for the application of state-based relief from extraordinary volume. Associated consumer reporting agencies should be allowed to designate states for application of state-based relief, using a standard of no more than 125% of the average 90-day rolling volume for triggering application of relief.

By allowing relief on a state by state basis, and by using a more reasonable multiple of average volume, the extreme spikes in dispute volume can be controlled, resulting in a more rational approach to insuring that the credit reporting system achieves the goal that Congress, the FTC, consumer reporting agencies, furnishers and users of information, and consumers all desire: fairness and accuracy in credit reporting.

The Proposal, perhaps unintentionally, suggests that the FACT Act's increased dispute resolution time frame only applies to nationwide consumer reporting agencies. On page 20-

21 the Proposal states “The Act also allows nationwide consumer reporting agencies a significantly longer period of time to resolve requests for reinvestigation when they originate from an annual file disclosure.” We believe, however, that the Act does not limit the application of this longer period of time to nationwide consumer reporting agencies. The FACT Act states:

(3) Reinvestigations.—Notwithstanding the time periods specified in section 611(a)(1) [§ 1681i(a)(1) of this title], a reinvestigation under that section by a consumer reporting agency upon a request of a consumer that is made after receiving a consumer report under this subsection shall be completed not later than 45 days after the date on which the request is received.

FACT Act § 211(a)(2)(a)(3) [15 USCA § 1681j(a)(3)]. By its terms, this section does not limit the application of the longer reinvestigation period to nationwide consumer reporting agencies. This distinction is important to associated consumer reporting agencies that must process disputes from consumers who take advantage of free file disclosures. Associated consumer reporting agencies may face even greater difficulties in handling dispute spikes than nationwide consumer reporting agencies, as explained above.

**Question 17.** Are there consumer reporting agencies in the U.S. that compile and maintain files on consumers on substantially a nationwide basis, other than those consumer reporting agencies which, pursuant to the proposed rule, will provide free annual file disclosures through the centralized source?

**Answer:**

We do not believe that currently, other than the nationwide consumer reporting agencies, there are any consumer reporting agencies in the U.S. that compile and maintain files on consumers on substantially a nationwide basis.

We thank you for the opportunity to submit our comments on the Proposal. Please do not hesitate to contact Bob Denny at 281 878-1915 or Ron Gore at 281 878-1921 if you have any questions concerning these comments or would like to discuss our views in further detail. We would also be happy to otherwise be of assistance in this matter.

Sincerely,

Bob Denny  
President  
CSC Credit Services, Inc.

Ron Gore  
Senior Counsel  
CSC Credit Services, Inc.